

RESPONSE TO COMMENTS

Basic Industrial Stormwater General Permit – NJ0088315

The Department issued a draft renewal of the Basic Industrial Stormwater General Permit (draft renewal permit) on March 7, 2007. Pursuant to N.J.A.C. 7:14A-15.10, the thirty (30) day public comment period began on March 7, 2007 when the Public Notice was published in the Atlantic City Press, Courier Post and the Star Ledger. Public Notice also appeared in the March 21, 2007 DEP Bulletin. The public comment period ended on April 9, 2007. The following persons submitted timely comments on the draft renewal permit:

1. Alan Bahl, EHS Team Member
BASF Corporation
2. David H. Brogan, Vice President
Environmental Policy
New Jersey Business and Industry Association
3. Melissa Danko, Executive Director
Marine Trades Association of New Jersey
4. Michael Egenton, Vice President,
Environment and Transportation
NJ State Chamber of Commerce
5. Gary G. Fare, Executive Director
Linden Roselle Sewerage Authority
6. John Maxwell, Associate Director
New Jersey Petroleum Council
7. Jeffrey J. Pantazes, Manager,
Permitting and Technical Services,
PSEG
8. Anthony Russo, Director of Regulatory Affairs
Chemistry Council of New Jersey

A summary of the timely and administrative comments received, the New Jersey Department of Environmental Protection's (Department) response to these comments, and an explanation of any changes from the draft action have been included below.

1. GENERAL

- 1.a. COMMENT: There are locations in the permit where it references Part I or Part II (e.g., Section D.9). However, the "Parts" were eliminated from the permit language during this revision. The reference to different "Parts" should also be eliminated. (1, 2, 4, 6, 8)

RESPONSE: The Department agrees that the draft renewal permit did not include the title "Part I". The draft renewal permit was not printed out of the New Jersey Environmental Management System (NJEMS) database. The final permit will be printed out of NJEMS and it will contain a Part I. Additionally, when the Basic Industrial Stormwater General Permit is issued final the

Department will ensure that all references to Part II are removed since there will only be one part to this permit.

- 1.b. COMMENT: The commenter supports the goal of the Department to provide guidance material and forms to facilities with current Stormwater Pollution Prevention Plans (SPPPs) to enable them to easily amend their current plans. The commenter recommends that guidance material include instructions on which modifications need to be made to current plans and include the appropriate forms for submittal. This will ensure that a complete and acceptable SPPP is prepared. (3)

RESPONSE: The Department appreciates the commenters support, and has made several updates/changes to the Guidance Document (including a separate Marina edition) that will assist facilities in developing and maintaining a complete and accurate SPPP. The Guidance Document also highlights new additions to the permit to assist facilities being reauthorized as part of the automatic renewal in updating their SPPP.

2. PERMIT SCOPE

- 2.a. COMMENT: The permit scope limiting the use of this permit to only the “industrial stormwater discharges to the surface/ground waters of the State for facilities that can eliminate exposure of source materials and industrial activity...” is too broad and overly restrictive and may prevent many industrial activities from utilizing this permit. Section A.2.a.i. of the draft renewal permit goes beyond the existing permit requirements by requiring facilities to eliminate exposure of source materials and industrial activities, which may not be practicable in many situations and may subject the facility to possible violations and penalties. (2, 4, 6, 7, 8)

RESPONSE: The draft renewal permit does not go beyond or exceed the existing permit requirements and is consistent with the existing permit by requiring facilities to eliminate exposure of source materials and/or industrial activity to stormwater. Since the initial issuance of the Basic Industrial Stormwater General Permit on October 1, 1992 the permit has required that facilities eliminate exposure of source material to stormwater through the implementation of Best Management Practices as part of a SPPP. Specifically, Part I, Section C.1.b. of the existing permit states that “the SPPP shall demonstrate that once it has been implemented, there will be no exposure, during and after storm events, of industrial materials, including machinery, waste products, by-products, raw materials or other source materials located at the facility, to stormwater that is discharged to surface or ground waters and regulated under this permit.”

The Department has made a number of changes to the format of the permit, including bringing important information like listing the discharges authorized under the general permit and a summary of permit conditions to the forefront to help clarify what facilities must do and to assist with compliance. However, the Department has not changed the fundamental concept of the general permit which is, and has always been, to eliminate exposure through remove and cover techniques.

If a facility is unable to eliminate exposure of source materials to stormwater through the implementation of a SPPP within the timeframes contained in the permit they will need to apply for an Individual Stormwater Permit or an Industry Specific Stormwater General Permit, as appropriate.

3. STORMWATER POLLUTION PREVENTION PLAN

- 3.a. COMMENT: The deadline of September 1, 2007 to revise a facilities SPPP to reflect changes in the draft renewal permit should be deleted and replaced with the following "...must revise their SPPP on or before the effective date of the permit plus six months to incorporate additional requirements contained in the permit." The existing deadline only allows approximately five months to revise the SPPP, assuming the permit is issued by May 9, 2007. This period will be further reduced should the issuance of the permit be delayed. In order to provide sufficient time for compliance, and to take into account any delays in issuing the final Permit the permit should be amended as stated above. (7)

RESPONSE: The Department agrees that facilities being reauthorized as part of this automatic renewal may need additional time to revise their SPPP and has changed the SPPP revision deadline from September 1, 2007 to October 1, 2007. The Department will reissue all Basic Industrial Stormwater General Permit authorizations, effective June 1, 2007. This will allow facilities four (4) months to update their SPPP. The Department feels that this is an adequate amount of time to revise existing SPPPs to incorporate the changes required in draft renewal permit. Additionally, the Department has removed the requirement to map all downspouts, and will only require those downspouts where industrial activity is occurring on the roof to be mapped (see response to Comment 4.a.). Finally, the revised Guidance Document will include specific information and forms to assist facilities in revising their SPPP.

- 3.b. COMMENT: Section C.1 and 2 state that "The SPPP (or "Any amended SPPP") must be signed, dated, implemented and retained for a period of at least five (5) years." If a facility ceases operation before the end of its five year permit term or if an existing permit cycle were to be extended beyond the current five year permit term, what would be the status of their SPPP? The commenter believes that the SPPP should be retained (and modified as necessary as required by the general permit) during the life of the permit. (5)

RESPONSE: The Department agrees with the commenter concerning the implementation of the SPPP and has removed the word "implemented" from Section C.1.d and Section C.2.b. However, in accordance with N.J.A.C. 7:14A-6.6 the SPPP must be retained for a period of at least five (5) years although there is no need to modify the plan if the facility ceases operations.

4. CONTENTS OF A STORMWATER POLLUTION PREVENTION PLAN

- 4.a. COMMENT: Section D.2.a.iii. of the draft permit renewal requires new and much more detailed information about stormwater flow (e.g., requiring that every downspout be identified on the map). This could be an enormous expansion of the SPPP requirements. For large industrial facilities, the location of each individual downspout is irrelevant – the identification of areas that drain to stormwater is the relevant fact. There could literally be thousands of downspouts at a facility. Their identification and mapping would require significant resources yet yield no environmental benefit. The Department should retain the language from the existing permit "Generalized stormwater flow and drainage patterns." (1, 2, 4, 6, 8)

RESPONSE: The Department agrees with the commenters, and has revised Section D.2.a.iii. of the permit to require facilities to only map downspouts if there is industrial activity is occurring on the rooftop.

- 4.b. COMMENT: It has been the Department's past practice to allow facilities which have developed DPCC/DCR Plans in accordance with N.J.A.C. 7:1E, to satisfy the SPPP requirements provided all requirements of the SPPP are included in such plans. The commenter requests that the draft renewal Permit include a provision that permits this practice so that case-by-case requests are not necessary. (7)

RESPONSE: The Department agrees with the commenter and will continue the practice of allowing facilities to cross reference their DPCC/DCR plan in their SPPP.

- 4.c. COMMENT: Section D.9 of the draft renewal permit requires that training records be incorporated into the SPPP. This is an unnecessary expansion of the SPPP. As long as the permittee has the records available for inspection, their location should not be important. The Department should eliminate this condition and add the following to Section F: "F.1.b. The permittee shall maintain records of all training conducted to satisfy the annual employee training requirement." (1, 2, 4, 6, 8)

RESPONSE: The Department agrees with the commenters, and has changed Section D.9.a of the permit to read "Include records (or cite the location of records) of all training conducted to satisfy the annual employee training requirement in Section F.1.a of the permit." This will allow facilities to cite the physical location of the training records, rather than making them a part of the actual SPPP.

5. EQUIPMENT AND VEHICLE WASHING (INCLUDING BOAT BOTTOM WASHING)

- 5.a. COMMENT: Regulating the temporary discharge of existing equipment and vehicle wash wastewater is not related to stormwater discharges and should not be regulated under the Basic Industrial Stormwater General Permit. Should the Department deem it necessary to regulate equipment and vehicle wash wastewaters it should do so under a separate General Permit. Discharges associated with equipment and car washes are process activities and are not generated as a result of stormwater runoff. (7)

RESPONSE: The Department agrees with the commenter that discharges from equipment and vehicle washing activities are not stormwater discharges and that they are actually a process wastewater discharge. The Department however disagrees that they are not related to stormwater discharges or the Basic Industrial Stormwater General Permit. When facilities wash equipment and vehicle residue from those activities including solids, oil and grease, metals and surfactants remain on the ground. These residues are then transported by stormwater during the next rain event. The Basic Industrial Stormwater General Permit requires that facilities eliminate all exposure of source materials, including residue from vehicle and equipment washing activities, to stormwater. Therefore, any facility that does conduct these activities would be in violation of their general permit. In addition, the Water Pollution Control Act (N.J.S.A. 58:10A-6) and NJPDES rules (N.J.A.C. 7:14A-2.1) state that, with some exceptions, it shall be unlawful for any person to discharge any pollutant except in conformity with a valid NJPDES permit. The Basic Industrial Stormwater General Permit does not currently authorize such discharges. Any unpermitted discharge of wash wastewater (with or without detergents) or rinse water is in violation of the Act and NJPDES rules.

To resolve this ongoing discharge of equipment and vehicle wash wastewater and to allow facilities with these discharges to continue to operate while working towards the proper management of the wastewater discharge, the Department decided to temporarily authorize these existing discharges of equipment and vehicle wash wastewater from permitted facilities. Any

facility currently authorized under the general permit with a discharge of equipment and vehicle wash wastewater has the option to apply for a separate NJPDES permit to authorize that discharge.

- 5.b. COMMENT: Section A.2.a.ii. of the draft renewal permit is too broad and will impose substantial costs and operational issues where there is not a reasonable basis for concern. The permit language should be changed as follows: “On or before June, 1, 2009 facilities must eliminate any unpermitted discharge of equipment and vehicle wash wastewater, excluding wash water without detergents from building and comfort cooling equipment but including other rinse water with or without detergents, to the waters of the State. Rinse water without detergents may be discharged to the ground and hence to groundwater.” (1, 2, 4, 6, 8)

RESPONSE: The discharge of any rinse water used for any purpose, with or without detergents, to surface or ground waters of the State is in violation of the Water Pollution Control Act (N.J.S.A. 58:10A-6) and NJPDES rules (N.J.A.C. 7:14A-2.1). The facility is rinsing comfort cooling equipment for maintenance reasons to remove accumulated debris. The Department will not permanently authorize these discharges in this general permit. Instead a facility may apply for a separate NJPDES permit to authorize such discharges. However, it would likely be more cost efficient to manage these discharges using other methods such as connecting to sanitary sewer or reuse of the rinse water.

(Also see comment 5a and 5c and the Department’s responses for additional background)

- 5.c. COMMENT: Section E.2.a. of the draft renewal permit stipulates the methods by which a facility can comply with the proposed prohibition. The Department should eliminate conditions 1. through v. and leave it to the permittee to choose the methods. These conditions are an unnecessary expansion of the Department’s prescriptions and will limit other possible options such as water recycling, which could be used to eliminate the discharge. The Department should not create another example of requirements that inhibit environmentally beneficial practices. (1, 2, 4, 6, 8)

RESPONSE: The Department is unaware of other options to properly manage the discharge of equipment and vehicle wash wastewater from such operations. The commenter suggests water recycling as a possible option. The permit specifically provides the installation of a wash wastewater reclaim/recycling system to capture, recycle and reuse the water as an option. The practice of capturing and recycling the wash wastewater as part of a beneficial reuse program (e.g., for horticultural reuse) would require the facility to apply for and obtain a separate NJPDES permit (which is listed as option v. of the permit). If the commenter would have provided alternative options, the Department would be better able to address these concerns, but at this time the Department feels that these five options are the only ones available that will properly manage this type of discharge.

- 5.d. COMMENT: If the Department chooses to regulate vehicle wash wastewater under the Permit, the term “equipment” associated with “Equipment and vehicle wash water” is vague. The commenter believes regulating “Equipment” associated with vehicle wash water should be eliminated. (7)

RESPONSE: The Department agrees that the term “equipment” is broad but it is designed to encompass a broad range of apparatus associated with many different types of industrial activities. The Department disagrees that the requirement should be limited to vehicles. As noted in response to comments 5.a. it is unlawful for any person to discharge any pollutant,

regardless of whether it is from washing “equipment” or from washing vehicles, except in conformity with a valid NJPDES permit.

- 5.e. COMMENT: The commenter requests that the temporary discharge of existing equipment and vehicle wash wastewater be extended until May 31, 2010 or beyond. An extension will allow for further research on advancing technologies to ensure that the systems that are purchased and put into place represent the best, long term viable option for the elimination of vessel wash waste water discharge. (3)

RESPONSE: The Department believes that a time-frame of three (3) years is sufficient to allow facilities to select and implement one of the five options as listed in the permit to properly manage vessel wash waste water discharges. In addition, the Department has developed specific Marina Guidance to assist marinas in understanding options and technologies available to them. This guidance will be provided to each marina authorized under the general permit with their renewal authorization. In addition the guidance will be available on the Department’s web site.

- 5.f. COMMENT: In order to comply with this proposed change, marinas may be required to apply for state and local permits for the installation of support facilities. The commenter is concerned that marinas will be held hostage by the currently enforced public access requirements and will be unable to fulfill the requirements outlined in this permit. Compliance with the Basic Industrial Stormwater permit can not and must not be tied to the public access requirements for marinas. If public access is required, there will be significant negative impacts to the entire recreational marine industry. Therefore, the commenter requests that a streamlined application process for the Coastal General Permit # 13, be developed and used for marinas that will be undertaking construction for the purpose of capturing equipment and vehicle wash wastewater and that the public access requirements be waived under this application. (3)

RESPONSE: The Department is aware that facility upgrades at marinas may require a separate Land Use permit and that those permits currently require marina owners to comply with Public Access regulations. The Division of Water Quality has been actively working with the Division of Land Use Regulation to address marina owners’ concerns. Please note however, that regardless of the outcome of those discussions, marina owners must comply with all applicable State regulations and the Basic Industrial Stormwater General Permit requirements. It is possible however for marina owners to comply with the equipment and vehicle wash water requirement and not trigger the requirement for a separate Land Use permit depending on what type of system they select, where they site the system, and what existing infrastructure is already at the marina. In addition, a marina owner always has the option to cease the discharge.

6. EMPLOYEE TRAINING

- 6.a. COMMENT: Section D.9 of the draft renewal permit requires that each facility develop and conduct annual Stormwater Pollution Prevention Plan (SPPP) training for “Appropriate employees on appropriate topics.” The word “appropriate” can lead to debate and confusion between an inspector and facility representative. The phrase “appropriate topics” should be replaced with “topics as identified in the SPPP.” (1, 2, 4, 6, 8)

RESPONSE: The Department agrees with the commenters and has changed the permit to read “Each facility must develop and conduct an annual Stormwater Pollution Prevention Plan training for employees on topics identified in the SPPP.”

7. GENERAL CONDITIONS: EXTENSIONS OF PERMIT DEADLINES

- 7.a. COMMENT: Section J.10 of the Basic Industrial Stormwater General Permit Draft Renewal, states that the Department can grant six-month extensions to the deadline to implement an SPPP, if the facility submits a written request for such extension, at least 30 days prior to the deadline, establishing to the Department's satisfaction that the Federal, State and local permits and approvals necessary for the construction of BMP's identified in the SPPP could not with due diligence be obtained within the time period set forth in the permit. The MTA/NJ respectfully requests that this language be changed to provide a twelve-month extension to facilities (3)

RESPONSE: The Department agrees with the commenter and has changed the permit to allow the Department to grant up to a twelve (12) month extension for delays caused by Federal, State and local permits and approvals necessary for the construction of BMP's identified in the SPPP.

8. DEFINITIONS

- 8.a. COMMENT: The definition of "Source Materials" is vague and ambiguous. The definition of source materials should include only those materials which, when comes into contact with stormwater and results in a runoff that could contaminate the waters of the State. Under the present definition, industrial machinery is considered to be a source material. In general, all machineries do not result in stormwater contamination. Some machinery may contain lubricants or other hazardous substances, however they may be sealed to prevent leakage. For example, vehicles, fan/blowers, gearboxes and the like are completely sealed. When stormwater does get in contact with such machinery, there is no exposure of the stormwater to the substances and not the machinery. (7)

RESPONSE: It would be impossible for the Department to compile a complete list of source materials that are applicable to each specific industry within the Federal definition of "stormwater discharges associated with industrial activity," therefore the definition of source material must be broad. However, the Department has changed the definition to state that source materials "mean any material(s) including but not limited to raw materials, intermediate products, final products, waste materials, by-products, industrial machinery, and fuels, lubricants, solvents, and detergents located at the facility that is directly or indirectly related to their industrial activities and which could be a source of pollutants in an industrial stormwater discharge." Additionally, the Department has developed a self-screening procedure to assist facilities with identifying source materials that must be addressed under this program.

Facilities are required to eliminate the exposure of source materials to stormwater, however not all industrial machinery is considered a source material. The Department has developed a Source Material Guidance document to enable permittees to determine if a material/machinery is a source material. If the material in questions meets any of the criteria, it is a source material. If it does not meet any of the criteria, then it generally may not be considered a source material. The Source Material Guidance has been updated and is included in the revised Basic Industrial Stormwater General Permit Guidance Document which will be provided to each permittee in every renewal authorization package.